

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JUSTIN GARDNER,

Petitioner,

vs.

STATE OF NEBRASKA,

Respondent.

8:18CV46

ORDER

This matter is before the court on the Notice of Appeal (filing 177) filed by Petitioner on June 2, 2022, and a memorandum from the Clerk of the Court requesting a ruling as to Petitioner's authorization to proceed in forma pauperis ("IFP") on appeal (filing 178). Petitioner seeks to appeal the court's April 12, 2022 Memorandum and Order (filing 170) denying him leave to proceed IFP on his previous appeal which is presently pending in the Eighth Circuit Court of Appeals.

Petitioner cannot appeal this court's denial of leave to proceed IFP on appeal. Rather, Petitioner should file a motion to proceed IFP in the Court of Appeals, which the Court of Appeals specifically directed him to do. (Filings 174 & 176.) *See* Fed. R. App. P. 24(a)(5) ("A party may file a motion to proceed on appeal in forma pauperis in the court of appeals within 30 days after service of the notice [of the district court's denial]."). Additionally, Petitioner has already pursued an interlocutory appeal, direct appeal, and his ninth appeal is presently pending. Accordingly, I certify that this appeal is frivolous and not taken in good faith, and Petitioner may not proceed in forma pauperis on appeal. *See* Fed. R. App. P. 24(a)(3) and 28 U.S.C. § 1915(a)(3).

IT IS THEREFORE ORDERED that: Petitioner may not proceed on appeal in forma pauperis. This matter is closed, and Petitioner should refrain from filing any further frivolous appeals.

Dated this 8th day of June, 2022.

BY THE COURT:



Richard G. Kopf
Senior United States District Judge